

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE D.S.R.VARMA

WRIT PETITION NO : 7467 of 2005

Between:

S.Tirupathaiah, S/o.Nagiseti, Licensee of Kanaka Durga Wines,
IL 24 shop, Komatikunta, Hyderabad, R/o.Kavadiguda, Hyderabad.

..... PETITIONER

AND

- 1 The Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad.
- 2 The Prohibition and Excise Superintendent, Hyderabad District, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, in the nature of a writ of Mandamus, or any other appropriate writ, direction or order declaring the inaction of the respondents in not passing orders on the application dated 04/02/2005 submitted by the petitioner under sec.47 of the A.P. Excise Act, 1968 to Compound the offence, as illegal and void and consequently direct the commissioner of prohibition and Excise, A.P., Hyderabad the 1st respondent herein, to pass orders forthwith compounding the offence and also direct the respondents to renew the IL 24 license of the petitioner for the current period; and pass such further or other orders as this Hon'ble court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.P.KAMLAKAR

Counsel for the RespondentS: GP FOR PROHIBITION & EXCISE

The Court at the stage of admission made the following :

ORAL ORDER:

Heard both sides. Perused the material placed before me.

Petitioner is a licensee under IL 24. On certain irregularities, he was booked under (b) and (c) of Section 36 of the A.P. Excise Act, 1968 (for short 'the Act') and his license was suspended, invoking the jurisdiction exercisable under Section 31 of the Act.

Upon such action, the petitioner submitted an application to the respondents seeking composition of the offence. But no orders have been passed on it. Consequently, his license also was not renewed. Hence the present writ petition.

The learned Government Pleader for Prohibition and Excise submits that the action initiated against the petitioner is not compoundable and therefore, the question of considering his application for composition does not arise.

In answer to the said proposition, the learned senior counsel Sri Manohar brings to the notice of this Court that though the case was booked under (b) and (c) of Section 36 of the Act, the action initiated against the petitioner was under Section 31 I (b) of the Act, which is compoundable. Therefore, having regard to the action initiated actually, the question of booking the petitioner under a particular provision invoking the jurisdiction under a particular provision i.e. Section 36 of the Act is not really material. It is only the action initiated under Section 31 of the Act alone, which is applicable. In other words, though the action initiated under (b) and (c) of Section 36 of the Act, it was meant for jurisdiction only. The real and effective action initiated was by way of issuing a show cause notice for cancellation of license purportedly under Section 31 I (b) of the Act, which is undisputedly compoundable.

Having regard to the facts and circumstances of the case, the writ petition is allowed at the stage of admission with a direction to the first respondent to dispose of the application for composition of the offence and also the consequential renewal application said to have been made by the petitioner and pass appropriate orders keeping in view the observations made in this order, as

expeditiously as possible, preferably, within a week from the date of receipt of a copy of this order as it has been represented that huge amounts have been lying in deposit with the respondents. No costs.

06-04-2005

Note:

Issue CC in two days

B/O KVSN

To

- 1 The Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad.
- 2 The Prohibition and Excise Superintendent, Hyderabad District, Hyderabad.
- 3 Two CCs to GP for Proh. & Excise, High Court t buildings, Hyderabad.
- 4 Two CD copies.